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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/212 /2010 - CU[DB], C/MISC./358/2011 Date **04/07/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. SAMIR OPTICS
5120, BALLIMARAN,
DELHI 110006

M/S. SAMIR OPTICS Appellant

Vs

C.C. (ICD) NEW DELHI **MISC. ORDER NO.C/139/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/290/ 2011 CU[DB]** dated 24.06.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult MR. PIYUSH KUMAR,
B-25, LAJPAT NAGAR-III,
NEW DELHI – 110 024.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.III

C/Misc No.358/2011 in C/Appeal No.212/2011

(Arising out of order in appeal No.CC(A)/Cus/ICD/21-24/10 dated 31.3.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Date of Hearing: 3.6.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Samir Optics — Appellant

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Ms. Reena Rawat, Advocate
Appeared for the Respondent: Shri K.K. Jaiswal, SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Misc order No. C/139/11
Final ORDER No. C/290/11

Per Mathew John:

The Appellant imported Sunglasses assorted and filed Bill of Entry 531078 dated 22-10-08 in ICD Thugalakabad claiming classification under Customs Tariff Item 90041000 and exemption from CVD as provided at S. No. 27 of Notification No.10/2006-CE dated 01-03-2006. The revenue was of the view that exemption under the said Notification will not be available to sun glasses because the exemption was for "Sunglasses for correcting vision and goggles" and the sunglasses were not of a type to correct short-sight or long-sight.

2. A show cause notice issued for denying the exemption was adjudicated by ordering classification under CTH 900410 but denying the benefit of exemption at S. No. 27 of Notification 010/2006-CE. The Appellant challenged this order before the Commissioner (Appeal) without any success. Aggrieved by the order of Commissioner (Appeal), the Appellant filed this appeal along with a stay application. After hearing the Stay Petition, the Tribunal ordered vide order dated 20-09-2010 directing the Appellant to deposit the entire differential duty. The Appellant did not make such deposit. In the meanwhile Tribunal had passed final order dated 21-01-2011 in Appeal No. C/40-43/11 dealing with the same matter in the case of another Bill of Entry filed by the Appellant upholding Appellant's contentions. So the Appellant has filed an application for modification of the stay order dated 20.9.2010.

3. We find that this issue has been already considered by the Tribunal in Appellant's own case relates to a different Bill of Entry and the matter has been decided in favour of the Appellant in Appeal No. C-40-43/2011 CU [DB] dated 21-01-2011 holding that the exemption under Sl. No. 27 of Notification 10/2006-CE is available for sunglasses.

4. Since the issue is already settled, we took up the case without any pre-deposit waiving the requirement ordered in order dated 20.9.2010 and we allow the Appeal of the Appellant.

5. Thus the Misc Application for modification of stay and the Appeal itself are disposed of.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)